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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/994,272	11/26/2001	Roel Van Woudenberg	NL 010154	8820

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P.O. BOX 3001
BRIARCLIFF MANOR, NY 10510

EXAMINER

PSITOS, ARISTOTELIS M

ART UNIT	PAPER NUMBER
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2653

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DATE MAILED: 08/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/994,272

Applicant(s)

VAN WOUTENBERG, ROEL

Examiner

Aristotelis M Psitos

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— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 20-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 3 & 4
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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Applicant's response of 5/21/04 has been considered with the following results.

Claims 20-24 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 5/21/04.

Specification

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

Information Disclosure Statement

The IDSes filed on 11/26/01 and 4/15/02 have been made of record.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the limitations of claims 3, 4 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement-drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the examiner does not accept the changes, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

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In the following analysis the examiner has grouped the following claims together, i.e., common subject matter/analysis:

Group A: Claims 1-3,11,12 and 18; two inform. Layers with an offset capability.

Group B: Claims 4-8,13-17,19: two inform. Layers with no offset capability and a desired laser beam diameter.

Group C: Claims 9-10: two inform. Layers with no offset capability.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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1. Claims 1-2,11,12 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 00/16320, or alternatively under 35 USC 103 (a) as being obvious thereover.

The examiner relies upon the EP equivalent document since it is in English(EP 1128368A1) as presenting the same disclosure as the WO document.

With respect to independent claims 1 and 11: applicant's attention is drawn to the discussion with respect to figure 3 as well as paragraphs 0001 – 0061. Such passages describe a multilayered optical disc having at least two substantially parallel information layers, the phrase "suitable to be scanned" is interpreted as a desired functional ability, and as further depicted in figure 4 of this document such is indeed capable of being done, i.e., "suitable". Data is written in data blocks. The guard fields are indicated in figure 3 as elements 35 and 36, which straddle the data component 32.

With respect to the ultimate paragraph of claim 1 (and claims 11 and 18), as indicated in paragraph 0061, the information layers can be offset by the noted lengths. Hence, under 102 considerations, the examiner concludes that such limitations are inherently present. That is when the information layers are appropriately offset the claimed limitation is present.

Alternatively, if applicant can convince the examiner that such a limitation is not present inherently, then the examiner would reject the claims as being obvious over the WO document because it teaches offsetting the two information layers within a range, a minimum of 0 and a maximum as noted in paragraph 0061.

It would have been obvious to modify the base system of the WO patent with its teaching of offsetting data layers, motivation is to provide for the appropriate signal readout as desired.

With respect to claims 2 and 12, this is interpreted as desired results and inherently present or alternatively obvious over the WO document – a minimum length of those parts of the guard fields, which do not overlap, can be so selected.

With respect to claim 18, this is drawn to a recording apparatus having recording and control units to perform the desired functions respectively. Such elements are considered inherently present in the WO document. Alternatively, if applicant can convince the examiner that such elements are not

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inherently present, then the claim would be rejected under 35 USC 103 as being obvious thereover, since such elements are notoriously old and well known (Official notice) in this environment to perform the appropriate functions. It would have been obvious to modify the base system of WO with the old and well known elements in order to perform the desired ability of recording information onto the disc so as to yield the structure depicted in figure 3 thereof.

2. Claims 4,6-8,13,15-17 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 00/16320, or alternatively under 35 USC 103 (a) as being obvious thereover.

With respect to independent claims 4 and 13, the preamble of this claim is the same as that of independent claims 1 and 11 respectively and no further analysis is made.

With respect to the ultimate paragraph in these claims (same subject matter), it describes a desired length of the guard fields in relation ship to a beam diameter when an optical beam is focused onto the lower of the two layers.

The examiner concludes that the WO document has such a capability, i.e., the focusing of an optical beam (which has a beam diameter) upon the lower of the two information layers. As further noted in paragraph 0120 of the WO document the in within a range of 20-100 mum in diameter.

Although there is no clear depiction of a minimum length of the guard fields in the WO document, because the document provides for an overlap from 0 to a maximum as discussed in paragraph 0061, and a light beam diameter from 20-100 mum is permitted, that a minimum length as recited if not inherently present is an obvious design capability for optimizing system parameters – see In re Peterson, 65 USPQ2nd 1379.

With respect to claim 19, this is drawn to a recording apparatus for yielding the format described in the ultimate paragraph thereof (which is the same as that found in claim 4 above).

The elements recited, radiation source, recording unit and control unit and their respective functions are considered inherently present in the above WO document – see the ability of recording with respect to figure 4.

Alternatively, if applicant can convince the examiner that such elements are not inherently present, then the examiner would reject the claims under 35 USC 103 because the existence of such

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elements, radiation source, recording unit, and a control unit are considered notoriously old and well known.

It would have been obvious to modify the base system of the WO document with the old and well known components identified above motivation is to provide for the recorded signal format disclosed in the WO document.

With respect to claims 6 and 15, as far as can be deciphered from the WO document, the length of the guard fields in each information layer is equal.

With respect to claims 7 and 16, the guard areas are so located wherein the examiner interprets the address portions as the header, and the length of such are either greater than or equal to half the beam diameter which is discussed in paragraph 0120 (20-110 mum diameter yielding a length from 10-50 mum).

With respect to claims 8 and 17, the gap lengths as depicted in the WO document meet these claims, (equal length in both information layers).

3. Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 00/16320 further considered with Ishida et al/WO 97/29483. US patent 62008603 is being supplied as the english translation thereof.

The WO document is relied upon for the reasons stated above, wherein the data layers overlap each other, i.e., there is no offset between such. There is no specific mention of a header region/area in the format.

Ishida et al teaches in this environment the ability of having a header prior to the data region – see the description of element 52 for instance.

It would have been obvious to modify the base system of the WO document with the above teaching of headers by Ishida et al, motivation is to provide for the appropriate "header" information for subsequent use/identification of the data. The "header" information is prerecorded.

4. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claim 1 above, and further in view of Oguro.

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Oguro teaches the ability of having both a pre and post – amble segment/section in this environment (see figure 6 and its disclosure for instance).

It would have been obvious to modify the base system of the above noted WO document with the above additional teaching from Oguro, motivation is to increase the flexibility of the WO document so as to permit use with disc formats of the Oguro type. Such is considered an expansion ability desired in this environment.

5. Claims 5 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claims 4 and 13 above, and further in view of Saito et al.

Saito et al teaches the ability of having/placing/recording dummy data in the appropriate fields to ensure proper synchronization of the information. Applicant's attention is drawn to figure 2 for instance. The examiner concludes the ability of dummy blocks as also teaching dummy data.

It would have been obvious to modify the base system as relied upon above in paragraphs 2 with the additional teaching from Saito et al, motivation is as discussed in Saito et al to provide appropriate synchronization upon use of the information.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Miyagawa et al is also cited for its discussion/teaching of pre- and post amble and header format in this environment and can be used in the above rejections

¹ Futakuchi et al is cited as illustrative of another multi layer disc having appropriate compensation of overlapping sections

Hard copies of the application files are now separated from this examining corps, hence the examiner can answer no questions that requires a review of the file without sufficient lead-time.

Any inquiries concerning missing papers/references, etc. must be directed to Group 2600 Customer Services at (703) 306-0377.

Any inquiry concerning the merits of this communication or earlier communications from the examiner should be directed to Aristotelis M Psitos whose telephone number is (703) 308-1598. The examiner can normally be reached on M-Thursday 8 - 4.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William R. Korzuch can be reached on (703) 305-6137. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Aristotelis M Psitos
Primary Examiner
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